

**IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF MISSOURI
SOUTHERN DIVISION**

**CALVIN ALLEN, SR., and
MARIXIA MALDONADO,**

Plaintiffs,

vs.

SETH GOMEZ, et al.,

Defendants.

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Case No. 6:22-cv-03041-MDH

ORDER

Before this Court is Defendant Seth Gomez's 12(b)(6) Motion to Dismiss for failure to state a claim. (Doc. 69). Defendant filed his Motion on December 12, 2022 and Plaintiffs' response was due no later than December 30, 2022. (Doc. 69). Plaintiffs, who remain pro se, do not appear to have an email address on file through which to receive electronic notifications. The certificate of service on Defendant's Motion to Dismiss fails to indicate that notice of the filing was mailed to Plaintiffs at their physical address of record. (Doc. 70 at 32). Mindful of Plaintiffs' pro se status, this Court waited until January 18, 2023, at which time this Court ordered Plaintiffs to respond to Defendant's Motion to Dismiss no later than February 17, 2023. (Doc. 77). To date, Plaintiffs have filed no response to Defendant's Motion to Dismiss.

Plaintiffs' 97-page First Amended Petition describes a series of events surrounding the death of Calvin Allen Jr. on March 1, 2019. (Doc. 14, ¶¶ 10-12). Calvin Allen, Jr., Plaintiffs' son, was killed at Ozark Inn, a Springfield, Missouri hotel. (Doc. 14 at 3). Calvin Allen, Jr., was killed allegedly due in part to his race. (Doc. 14 at 3). Plaintiffs allege multiple federal and state law

violations against eleven defendants. (Doc. 14). Plaintiffs allege Defendants Gomez, Simrin, Slobig, and Jordon began planning the murder of Calvin Allen Jr. on February 17, 2019. (Doc. 14, ¶ 199). Plaintiffs allege Defendant Gomez carried out the homicide¹. (Doc. 14, ¶ 204). Plaintiffs allege Springfield Police Officers mishandled a 911 call in responding to the hotel. Plaintiffs also listed as defendants Laxi Enterprises Inc. and Bipin Patel, who Plaintiffs allege owned the hotel where Plaintiffs' son was killed. (Doc. 14 at ¶¶ 3-5). In June 2022, this Court dismissed from this action Springfield Police Department, Paul Williams, Kelly Patton, Bipin Patel, and Laxmi Enterprise, Inc. pursuant to 12(b)(6) Motions to Dismiss. (Docs. 40, 41).

Federal Rule of Civil Procedure 41(b) allows for involuntary dismissal when a plaintiff fails to prosecute. Dismissal pursuant to Rule 41(b) is an adjudication on the merits of the claim, unless specifically stated in the court's order. Courts ought to employ a dismissal with prejudice on the merits "only in cases of willful disobedience of a court order or...persistent failure to prosecute a claim." *Rodgers v. Curators of Univ. of Missouri*, 135 F.3d 1216, 1219 (8th Cir. 1998) (citations omitted). Mindful of Plaintiffs' pro se status, this Court hereby **GRANTS** Defendant Gomez's Motion to Dismiss. All claims against Defendant Gomez are dismissed without prejudice.

IT IS SO ORDERED.

Dated: February 23, 2023

/s/ Douglas Harpool
DOUGLAS HARPOOL
United States District Judge

¹ Gomez was convicted of first-degree murder of Calvin Allen, Jr. in 2021.